INDEX

CITATIONS

In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 156

E. M. GEORGE-HOWARD AND WOODDY SWEARINGEN, PETITIONERS

v.

FEDERAL DEPOSIT INSURANCE CORPORATION

BRIEF FOR THE RESPONDENT IN OPPOSITION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

OPINIONS BELOW

The opinion of the District Court (R. 37–41) is reported in 55 F. Supp. 921. The opinion of the Circuit Court of Appeals for the Eighth Circuit (R. 88–98) is reported in 153 F. (2d) 591.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on February 18, 1946 (R. 98–99). A petition for rehearing, filed on March 25, 1946 (R. 101–109), the time for filing having been extended to that date (R. 99), was denied April 2, 1946 (R. 111). The petition for a writ of certiorari was filed June 8, 1946. The jurisdiction of this Court is invoked under the provisions of

Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether the Circuit Court of Appeals had jurisdiction to entertain the appeal.

2. Whether the District Court had jurisdiction to entertain the action.

3. Whether the District Court should have refused to exercise jurisdiction out of considerations of comity.

4. Whether the decision below conflicts with law established by Missouri State courts.

STATUTES INVOLVED

The pertinent provisions of the statutes involved are set forth in the Appendix, pp. 21–24, *infra.*

STATEMENT

The Federal Deposit Insurance Corporation (hereinafter called "FDIC") is a corporation duly created, organized, and existing under and by virtue of Sec. 12B of the Federal Reserve Act (Act of June 16, 1933, c. 89, sec. 8, 48 Stat. 168, as amended by the Act of August 23, 1935, c. 614, sec. 101, 49 Stat. 684 (12 U. S. C. 264)), with its principal place of business in the City of Washington, D. C. (R. 55–56). More than one-half of the capital stock of the FDIC is owned by the Government of the United States (R. 76, 77).

The Nevada Trust Company (hereinafter called "the Bank") on and prior to the second day of

December 1937 was a banking corporation organized and existing under and by virtue of the laws of the State of Missouri, with its principal place of business in Nevada, Vernon County, Missouri (R. 56). It was then, and for some time prior thereto had been, an "insured bank," its deposits being insured by the FDIC (R. 56). On December 2, 1937, the Bank was closed by its directors and placed in the hands of R. Waldo Holt, Commissioner of Finance of the State of Missouri (hereinafter called "the Commissioner") for the purpose of liquidation (R. 56, 65). The Commissioner took possession and control of the assets and affairs of the Bank through L. R. Twyman, Special Deputy Commissioner of Finance (hereinafter referred to as "the Deputy Commissioner") (R. 13, 30).

Between December 2, 1937 and May 5, 1938, the FDIC paid the depositors of the Bank filing claims the amounts of their respective insured deposits therein (R. 56). In accordance with the requirements of U. S. C., Title 12, Section 264 (l) (7), as then in effect, the FDIC took an assignment of all claims each insured depositor had against the Bank (R. 56) which contained, *inter alia,* the following provisions:

> For the purpose of subrogating the Federal Deposit Insurance Corporation of all of claimant's rights against said closed insured bank arising out of the INSURED DEPOSIT in the amount shown above to the

> extent of the amount paid the receipt thereof is hereby acknowledged, claimant hereby assigns, transfers and sets over unto said Corporation all claims against said closed insured bank and its stockholders arising out of said insured deposit, together with all evidences of such indebtedness held by claimant. (R. 57.)

The aggregate amount paid by the FDIC to insured depositors of the Bank was $120,948.14 (R. 58), for which sum, by virtue of the subrogation effected by the assignments aforesaid, the FDIC filed three proofs of claim with the Deputy Commissioner in the respective amounts of $5,827.97, $114,991.53, and $128.64 (R. 58–59). Thereafter, the Deputy Commissioner allowed the FDIC's claims as filed (R. 58), which allowances were approved by the Circuit Court of Vernon County, Missouri (R. 59).

The Deputy Commissioner paid the FDIC its preferred claim in the amount of $5,829.97 on May 20, 1938 (R. 59) and also paid the FDIC the following dividends on its common claims: 50% on May 23, 1938, 35% on October 26, 1938, 10% on May 21, 1940, and 5% on February 19, 1941 (R. 59). All other claims or demands against the Bank both of a preferred and common character have been paid and liquidated (R. 17, 30).

On or about February 26, 1941, the FDIC filed with the Deputy Commissioner its demand for interest in the aggregate sum of $6,877.19, computed on its principal claim at 6% per annum

from December 2, 1937 to the dates of the various payments by the Deputy Commissioner as hereinabove set forth (R. 60). On April 4, 1941, the Commissioner rejected and disallowed FDIC's demand for interest aforesaid (R. 60).

On the 30th day of June 1941, an agreement was entered into by and between the FDIC and the defendant, E. M. George-Howard, holder of all of the outstanding capital stock of the Bank, wherein E. M. George-Howard agreed to place the disputed sum of $6,877.19, representing the amount of the FDIC's claim for interest, in escrow with the defendant, Wooddy Swearingen, as Trustee, contemporaneously with the termination of the liquidation of the Bank, and upon the delivery to E. M. George-Howard by the Commissioner of the assets and surplus of the Bank remaining after the payment of all claims and demands against the Bank, with the exception of the FDIC's demand for interest (R. 60–61). The agreement further provided that the defendant, Wooddy Swearingen, should hold the sum so deposited to his credit as trustee until such time as the parties thereto should jointly give him directions as to disposition of payment thereof, or until a court of competent general jurisdiction should render a final valid judgment making disposition of the fund and directing him as to such disposition (R. 60–61).

The Circuit Court of Vernon County, Missouri, on June 30, 1941 ordered, adjudged, and decreed

that the final report and application for discharge of D. R. Harrison, Commissioner of Finance of the State of Missouri, the duly authorized and lawfully appointed successor to R. Waldo Holt, be approved (R. 61). On the same day the said court approved the agreement between the FDIC and the defendants, E. M. George-Howard and Wooddy Swearingen, and ordered and directed the Commissioner to surrender, deliver, and turn over to the defendant, E. M. George-Howard, as sole owner of all outstanding capital stock of the Bank, possession, control, and custody of all assets of the Bank of every kind, nature, and description (R. 61, 70). In accordance with said order, the Commissioner delivered such assets to the defendant, E. M. George-Howard, and on July 5, 1941 the sum of $6,877.19 was deposited to the credit of Wooddy Swearingen, Trustee, as agreed (R. 61).

The FDIC thereupon on October 3, 1941 filed its petition in the United States District Court for the Western District of Missouri, Southwestern Division, praying (1) that the court adjudge and declare that the FDIC, as statutory subrogee and assignee of the depositors of the Bank be entitled to the payment of interest in the aggregate sum of $6,877.19, computed at the rate of six percent per annum on its principal claim from December 2, 1937 to the dates of payment by the Deputy Commissioner, and (2) that an order be entered directing the defendant, Wooddy Swearingen, to

deliver and pay over to the FDIC the amount held by him in escrow (R. 1–9). The cause was transferred on January 27, 1942 to the Western Division of the U. S. District Court for the Western District of Missouri (R. 11).

The District Court dismissed the action after trial, on the grounds (1) that the controversy was not one arising under the laws of the United States within the meaning of U. S. C. Title 28, Sec. 41 (1), as a basis for federal jurisdiction, and (2) that even if jurisdiction had thus existed, a federal court ought not to exercise it in the situation, for comity reasons, but should leave the controversy to be presented to the state circuit court which had supervised the liquidation (R. 46–48). On appeal the Circuit Court of Appeals for the Eighth Circuit reversed and remanded the case, with directions to enter judgment for FDIC (R. 98–99).

ARGUMENT

In essence the petitioners' contentions[1] resolve themselves into the questions whether the court below had jurisdiction of the appeal at all because of the holding of the district judge as to the constitutionality of a subsection of Section 12 of the Federal Reserve Act; whether the District Court had jurisdiction; whether the District Court for comity reasons should have de-

[1] Petitioners pose nine questions with subdivisions under each as the foundation for their petition for the issuance of a writ.

clined to exercise jurisdiction; and whether the decision below accords with Missouri law. We submit that the court below answered these questions correctly.

1. In refusing to give effect to the provision in 12 U. S. C. Sec. 264 (j) that "all suits of a civil nature * * * to which the Corporation shall be a party shall be deemed to arise under the laws of the United States", the District Court seemingly held that provision unconstitutional (R. 38–39). Section 2 of the Act of August 24, 1937 (50 Stat. 751, 752, 28 U. S. C. Sec. 349a) provides that in proceedings in which the United States or any agency thereof is a party "and in which the decision is against the constitutionality of any Act of Congress, an appeal may be taken directly to the Supreme Court of the United States * * *". Petitioners' contend that in view of this provision, the appeal from the judgment of the District Court in this case should have been taken directly to this Court rather than to the Circuit Court of Appeals (Pet. 13–14, 25). We submit that the statute embodies no such mandatory requirement.

The statute provides that under the circumstances there enumerated, an appeal *may* be taken directly to the Supreme Court (see Appendix, p. 21). This, on its face, is permissive, not mandatory. And the legislative history of the Act of August 24, 1937 (50 Stat. 751), shows that Congress had the distinction between *shall* and

may clearly before it. 81 Cong. Rec. 3270. Cf. *Farmers and Merchants Bank* v. *Federal Reserve Bank,* 262 U. S. 649, 662–663.

Furthermore, the provisions of the statute expressly show that it was regarded as proper that in those cases where all the factors were present which would make the statute applicable, appeals might nevertheless be taken to other than the Supreme Court. For, it is provided, "in the event that any such appeal is taken [under this section], any appeal or cross-appeal by any party to the suit or proceeding taken previously, or taken within sixty days after notice of an appeal under this section, shall also be or be treated as taken directly to the Supreme Court of the United States." Since there is a time limit of thirty days on the taking of an appeal under this section, the statute would seem clearly to be referring to the Circuit Court of Appeals when it mentions appeals "taken within sixty days after notice of an appeal under this section." The section, while giving to any party the option of appealing directly to this Court, would seem clearly to contemplate that in the event the option was not exercised appeal would lie as usual to the Circuit Courts of Appeal.

It is also clear from the legislative history that the statute was intended to provide an optional procedure for the expeditious final determination of questions concerning the constitutionality of acts of Congress. The report of the House Com-

mittee on the Judiciary, H. Rep. No. 212 (
Cong., 1st Sess.) stated:

> The importance to the Nation of pr
> determination by the court of last r
> of disputed questions of the cons
> tionality of acts of the Congress re
> no comment. It is provided by the
> mittee amendment to this bill that th
> torney General *in his discretion* may
> peal directly to the Supreme Court
> any decision or order of a lower
> which is adverse to the constitutionali
> an act of Congress, and that such ap
> shall have precedence over other cas
> the Supreme Court. [Italics supplie

Similar views were expressed in the debates
Cong. Rec. 3272, 8507.

During the debates the question of permi
parties other than the Attorney General t
peal directly to the Supreme Court arose.
8507. Concern was also expressed as to
would happen when a party had appealed
Circuit Court of Appeals but the Attorney
eral had intervened on a constitutional qu
and wished to go directly to this Court.
3261. The act as finally passed met these
tions by giving all parties the option of app
directly to this Court, and by providing th
the event a party took such an appeal, any
appeal taken to a Circuit Court of Appeals
be consolidated with that in this Court.
man v. *McClelland,* 284 Fed. 837, *United St*

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Jahn, 155 U. S. 109, and *Great Northern Ry. Co.* v. *Blaine County,* 252 Fed. 548, relied upon by petitioners all relate to a statute repealed in 1925, which provided for direct appeal to the Supreme Court in all cases in which the jurisdiction of federal courts was in issue. This statute was replaced by the Act of February 13, 1925, c. 229, Sec. 1, 43 Stat. 936, 938 (28 U. S. C. 345). Furthermore, the cases cited by petitioners recognize that under the statute there involved an appeal might be taken to the Circuit Courts of Appeal where the District (or Circuit) Court had decided jurisdictional and other questions. Then "the Courts of Appeals have jurisdiction to review both the jurisdictional question and the other questions determined." *Great Northern Ry. Co.* v. *Blaine County, Neb.,* 252 Fed. 548, 551 (C. C. A. 8); *United States* v. *Jahn,* 155 U. S. 109, 114–115. Cf. *McLish* v. *Roff,* 141 U. S. 661, 668.

Were the contrary the rule, an unnecessary burden would be placed upon this Court, requiring it in every instance to review an unsound decision on a constitutional question when the error otherwise would, as here, be readily corrected by the Circuit Court of Appeals. We submit that there is nothing either in the language or legislative history of the 1937 Act which requires such an undesirable result.

2. The District Court had jurisdiction of the instant suit. Commencing with the case of *Os-*

born v. *Bank of United States,* 9 Wheat. 738, it consistently has been held that litigation involving federally created corporations arises under the laws of the United States. *Pacific Railroad Removal Cases,* 115 U. S. 1; *Matter of Dunn,* 212 U. S. 374; *Bankers Trust Co.* v. *Texas & P. Ry. Co.,* 241 U. S. 295, 60 L. Ed. 1010; *American Bank & Trust Co.* v. *Federal Reserve Bank of Atlanta,* 256 U. S. 350. This doctrine extends to cases involving interpretation and application of state law. *Supreme Lodge Knights of Pythias* v. *Kalinski,* 163 U. S. 289; *Male* v. *A. T. & S. F. Ry. Co.,* 240 U. S. 97. From time to time Congress has by statute narrowed the class of federally chartered corporations to which the rule laid down by the line of cases led by the *Osborn* case applied. See *People of Puerto Rico* v. *Russell & Co.,* 288 U. S. 476, 485. The Act of February 13, 1925, c. 229, section 12, 43 Stat. 941 (28 U. S. C. 42) limits the jurisdictional meaning of Section 24 (1) (a) of the Judicial Code insofar as federally created corporations are concerned to those wherein the Government is the owner of more than one-half of the capital stock. But here the District Court has found that the United States owns more than one-half of the outstanding stock of FDIC (R. 47).[2] In such circumstances, it is clear that

[2] Petitioners attempt to cast doubt on the fact that the federal government owns more than one-half of the capital stock of FDIC. This argument finds no support in the record. Moreover, the annual reports of the FDIC to Congress for each year from 1934 to the present clearly show that, pur-

the District Court had jurisdiction. *Federal Intermediate Credit Bank* v. *Mitchell,* 277 U. S. 213; Moore's Federal Practice, p. 505.[3]

Despite petitioner's contention, *Gully* v. *First National Bank,* 299 U. S. 109, is not to the contrary. It specifically recognized that federal incorporation was a ground for federal jurisdiction where the United States holds more than one-half the stock (p. 113) and stated that although the "charter cases" were to be treated as exceptional, within their special field, "there was no thought to disturb them" (p. 114).

The second ground upon which federal court jurisdiction rests is U. S. C. Title 12, Sec. 264 (j) (4), which the District Court held unconstitutional. That section provides:

> Upon June 16, 1933, the Corporation [FDIC] shall become a body corporate and as such shall have the power * * * Fourth. To sue and be sued, complain and defend, in any court of law or equity, State

suant to the provisions of Subsection (d) of Section 12B of the Federal Reserve Act (U. S. C., Title 12, Section 264 (d), the United States not only subscribed but also paid for and still holds $150,000,000 of the capital stock of the Corporation and the 12 Federal Reserve Banks subscribed as well as paid for and still own $139,299,556.99 of such stock. No stock has been issued to any person other than the Government and the Federal Reserve Banks. Annual Report of FDIC for year ended December 31, 1934, p. 11; id. 1935, p. 12; id. 1936, p. 36; id. 1937, p. 26; id. 1938, p. 38; id. 1939, p. 40; id. 1940, p. 32; id. 1941, p. 38; id. 1942, p. 24; id. 1943, p. 27; id. 1944, p. 29.

[3] See also *Machine Tool & Equipment Corp.* v. *R. F. C.,* 131 F. (2d) 547 (C. C. A. 9).

or Federal. *All suits of a civil nature at common law or in equity to which the Corporation shall be a party shall be deemed to arise under the laws of the United States.*

The District Court held and petitioners now argue that the question of whether a given controversy arises under the laws of the United States is a judicial and not a legislative question. This Court has however held consistently that the jurisdiction of federal courts over cases and controversies involving federally chartered corporations presents a question in respect of which Congress has the ultimate say. *People of Puerto Rico* v. *Russell & Co., supra; Gully* v. *First National Bank, supra.* There is nothing in the nature of FDIC which calls for a departure from this accepted principle.[4] In *D'Oench, Duhme & Co.* v. *FDIC,* 315 U. S. 447, 455, 467 this Court gave full effect to this principle, and recognized the explicit statutory provision manifesting congressional adherence to it, in so far as the FDIC is concerned.

Finally, even if the question were now open, and not controlled by any statute or accepted prin-

[4] A similar provision relative to Federal Reserve Banks (U. S. C. Title 12, Sec. 632) has been sustained by the courts. *Federal Reserve Bank of Richmond* v. *Kalin,* 77 F. (2d) 50 (C. C. A. 4); *Federal Reserve Bank of Atlanta* v. *Atlanta Trust Co.,* 91 F. (2d) 283 (C. C. A. 5); *British-American Tobacco Co.* v. *Federal Reserve Bank of New York,* 105 F. (2d) 935 (C. C. A. 2).

ciple, the controversy here does arise under the laws of the United States, for the federal court jurisdiction is predicated on the fact that the relief sought in the subject suit arises out of the right of subrogation vested in the FDIC by U. S. C. Title 12, Sec. (l) (7).

The Federal Deposit Insurance Corporation was required under the provisions of Subsection (l) (6) of ~~tis~~ its charter (*infra*, p. 22) to discharge its liability as insurer of deposits in the subject bank. Before doing so, however, it was compelled by Subsection (l) (7) (*infra*, p. 23) to make certain that its right to be subrogated to the rights of such depositors, should have been recognized either by express provision of state law, by allowance of claims by the authority having supervision of the bank, by assignment of claims by depositors, or by any other effective method.

Subsection (l) (7) further provides "In the case of any closed insured bank, such subrogation shall include the right on the part of the Corporation to receive the same dividends from the proceeds of the asets of such closed bank * * * as would have been payable to the depositor on a claim for the insured deposit." The depositors would have been entitled to payment of interest out of any surplus remaining in the hands of the liquidating agent after payment of the principal amount of creditor's claims as against stockholders. *Stein* v. *Delano*, 121 F. (2d) 975 (C. C. A.

3), certiorari denied, 314 U. S. 655 rehearing denied, 314 U. S. 711, rehearing denied, 314 U. S. 713. *FDIC* v. *Farmers Bank of Newtown* (Mo. App.) 180 S. W. (2d) 532. In bringing this action, Federal Deposit Insurance Corporation sought to enforce a right acquired by it pursuant to federal law, thus presenting a federal question. See *D'Oench, Duhme & Co.* v. *FDIC, supra; Sowell* v. *Federal Reserve Bank*, 268 U. S. 449.

3. This case presents no considerations of comity which would warrant a Federal Court in refusing to exercise jurisdiction. Petitioners contend and the District Court held that out of considerations of comity a Federal Court should not entertain jurisdiction of this suit on the ground that this suit, being for interest, is not separable from the claim for principal heretofore allowed by the Commissioner of Finance of the State of Missouri.

A federal court should not decline jurisdiction on comity considerations except in such special and peculiar circumstances and on the basis of such limitations as traditionally justify courts in declining to exercise the jurisdiction which they possess. *Commonwealth Trust Co. of Pittsburgh* v. *Bradford,* 297 U. S. 613, *Meredith* v. *City of Winter Haven,* 320 U. S. 228, 88 L. Ed. 9. Such circumstances are not here presented.

First, there was no other court proceeding or administrative proceeding pending at the time the instant case was commenced. The liquidation of

the Nevada Trust Company had been terminated, the Commissioner of Finance discharged, and the disputed fund placed in the possession of an escrow agent mutually agreed upon by the parties hereto, its disposition to abide the joint order of the parties or the judgment of a court of competent jurisdiction. It is obvious from the provisions of the order entered by the State Circuit Court at the time the liquidation was terminated that further judicial action, if necessary, would be by way of a plenary suit between the real parties in interest in *any* court of competent general jurisdiction.

Had the state court desired to retain or to exercise jurisdiction over the interest controversy between the FDIC and the sole stockholder of the Bank, it could easily have done so. Instead it approved the delivery of the remaining assets of the Bank to petitioner George-Howard upon assurance that the latter would deposit an amount sufficient to satisfy the FDIC's demand, not with an officer of the court, but with an escrow agent mutually agreeable to the FDIC and E. M. George-Howard. The very purpose of the creation of the escrow was to terminate the state liquidation and the proceedings pending before the Circuit Court. The turn-over order to E. M. George-Howard was unconditional and final, for it directed that E. M. George-Howard be recognized henceforth as the absolute owner of the residual assets of the bank.

The State Circuit Court properly considered its jurisdiction terminated with the winding up of the receivership. The Commissioner of Finance of the State of Missouri in winding up the affairs of a bank is a statutory liquidating agent as distinguished from an equity receiver. He is not appointed by the court, and his functions are not dependent on the court's approval except in instances specifically provided by statute. *Commercial Bank of Jamesport* v. *Songer,* 229 Mo. App. 168. When the Commissioner is discharged, the liquidation is terminated, and the statutes, from which the State Circuit Courts derive such jurisdiction as they have over the liquidation, do not invest them with a continuing jurisdiction over matters relating to the liquidation after the Commissioner's discharge. The court below, we submit, correctly decided that no comity considerations justified the District Court in refusing to exercise jurisdiction. *Wilhoit* v. *FDIC,* 143 F. (2d) 14 (C. C. A. 6).

4. The decision of the court below accords with Missouri law. The final contention of petitioners is that the decision of the Circuit Court of Appeals is contrary to the law enunciated by the Missouri State courts. We submit that there is no merit to this contention in view of the fact that the Kansas City Court of Appeals, an Appellate Court of Missouri, has ruled on the exact question presented by the case at bar in *FDIC* v. *Farmers Bank of Newtown,* 180 S. W. (2d) 532. In that

case it was held that where the FDIC paid insured depositors of a closed bank the amount of their deposits and obtained from each depositor an assignment of his claim, and the bank subsequently proved to have surplus assets after payment of all claims, the FDIC was entitled to interest on depositors' claims computed from the date the bank closed until the FDIC received payment. The defendant in the *Newtown* case raised the same contentions which are maintained by the petitioners herein and the court held them to be of no avail.[5] *State* v. *Sevier,* 337 Mo. 1174, urged by petitioners as evidencing a different rule is not in point. There a writ of prohibition was granted to prevent an unauthorized state court from interfering with the Commissioner of Finance in the liquidation of a bank. Here, the liquidation had been completed and the Commissioner had no further interest in the matter.

The holding in the *Newtown* case is in accordance with the uncontradicted weight of authority. The FDIC's right to interest on claims assigned to it has heretofore been sustained in the following cases as well as in the *Newtown* case: *Wilhoit* v. *FDIC,* 143 F. (2d) 14 (C. C. A. 6) (also see *FDIC* v. *Wilhoit,* 297 Ky. 339); *FDIC* v. *Leggett,*

[5] Concededly, the Kansas City Court of Appeals is an intermediate appellate state court, but under the doctrine of *West* v. *A. T. & T. Co.*, 311 U. S. 223, the decisions of intermediate appellate courts are indicative of the state law in the absence of a ruling by the highest court of the state, and should be so recognized by federal courts.

204 Ark. 780; *Bates* v. *Farmers Savings Bank of Ankeny,* 231 Ia. 1151; *FDIC* v. *Oconto County State Bank,* 241 Wis. 369; *Haugo* v. *FDIC* (S. D. 1944), 15 N. W. (2d) 744.

CONCLUSION

The decision is correct and does not conflict with decisions of the United States courts and Missouri courts nor violate constitutional rights. It is, therefore, respectfully submitted that the petition for a writ of certiorari should be denied.

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JULY 1946.

APPENDIX

Section 2 of the Act of August 24, 1937, c. 754, 50 Stat. 751, 752 (28 U. S. C. 349a) provides:

> In any suit or proceeding in any court of the United States to which the United States, or any agency thereof, or any officer or employee thereof, as such officer or employee, is a party, or in which the United States has intervened and become a party, and in which the decision is against the constitutionality of any Act of Congress, an appeal may be taken directly to the Supreme Court of the United States by the United States or any other party to such suit or proceeding upon application therefor or notice thereof within thirty days after the entry of a final or interlocutory judgment, decree, or order; and in the event that any such appeal is taken, any appeal or cross-appeal by any party to the suit or proceeding taken previously, or taken within sixty days after notice of an appeal under this section, shall also be or be treated as taken directly to the Supreme Court of the United States. In the event that an appeal is taken under this section, the record shall be made up and case docketed in the Supreme Court of the United States within sixty days from the time such appeal is allowed, under such rules as may be prescribed by the proper courts. Appeals under this section shall be heard by the Supreme Court of the United States at the earliest possible time and shall take precedence over all other matters not of a like

character. This section shall not be construed to be in derogation of any right of direct appeal to the Supreme Court of the United States under existing provisions of law.

Section 12 of the Act of February 13, 1925, c. 229, 43 Stat. 936, 941 (28 U. S. C. 42) provides:

> That no district court shall have jurisdiction of any action or suit by or against any corporation upon the ground that it was incorporated by or under an Act of Congress: *Provided,* That this section shall not apply to any suit, action, or proceeding brought by or against a corporation incorporated by or under an Act of Congress wherein the Government of the United States is the owner of more than one-half of its capital stock.

Subsection (l) (6) of Section 12B of the Federal Reserve Act, as amended by the Act of August 23, 1935, c. 614, Title I, Section 101, 49 Stat. 684, 695 (12 U. S. C. 264 (l) (6)) provides:

> Whenever an insured bank shall have been closed on account of inability to meet the demands of its depositors, payment of the insured deposits in such bank shall be made by the Corporation as soon as possible, subject to the provisions of paragraph (7) of this subsection, either (A) by making available to each depositor a transferred deposit in a new bank in the same community or in another insured bank in an amount equal to the insured deposit of such depositor and subject to withdrawal on demand, or (B) in such other manner as the board of directors may prescribe: *Provided,* That the Corporation, in its discre-

tion, may require proof of claims to be filed before paying the insured deposits, and that in any case where the Corporation is not satisfied as to the validity of a claim for an insured deposit, it may require the final determination of a court of competent jurisdiction before paying such claim.

Subsection (l) (7) of Section 12B of the Federal Reserve Act, as amended by the Act of May 25, 1938, c. 276, 52 Stat. 442 (12 U. S. C. 264 (l) (7)) provides:

> In the case of a closed national bank or District bank, the Corporation, upon the payment of any depositor as provided in paragraph (6) of this subsection, shall be subrogated to all rights of the depositor against the closed bank to the extent of such payment. In the case of any other closed insured bank, the Corporation shall not make any payment to any depositor until the right of the Corporation to be subrogated to the rights of such depositor on the same basis as provided in the case of a closed national bank under this section shall have been recognized either by express provision of State law, by allowance of claims by the authority having supervision of such bank, by assignment of claims by depositors or by any other effective method. In the case of any closed insured bank, such subrogation shall include the right on the part of the Corporation to receive the same dividends from the proceeds of the assets of such closed bank and recoveries on account of stockholders' liability as would have been payable to the depositor on a claim for the insured deposit, but such depositor shall retain his claim for any uninsured

portion of his deposit: *Provided,* That, with respect to any bank which closes after the date this paragraph as amended takes effect, the Corporation shall waive, in favor only of any person against whom stockholders' individual liability may be asserted, any claim on account of such liability in excess of the liability, if any, to the bank or its creditors, for the amount unpaid upon his stock in such bank; but any such waiver shall be effected in such manner and on such terms and conditions as will not increase recoveries or dividends on account of claims to which the Corporation is not subrogated: *Provided further,* That the rights of depositors and other creditors of any State bank shall be determined in accordance with the applicable provisions of State law.

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